

**MINUTES FOR THE COURT OF APPEAL  
STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT**

**February 28, 2005**

DIVISION ONE

2-28-05

125891-05

The **HONORABLE STEVEN C. SUZUKAWA**, Judge of the Superior Court of California, County of Los Angeles, is hereby assigned to assist the Court of Appeal, Second Appellate District, **Division One**, as a justice thereof, on the following dates:

**March 1, 2005 to April 30, 2005**

and until completion and disposition of all causes and matters submitted pursuant to this assignment including, if necessary by reason of a vacancy or disqualification of a Court of Appeal justice, all petitions for rehearing arising out of such causes and matters.

This assignment does not extend to any matter in which the panel would be composed of two justices pro tempore.

Dated: February 17, 2005

Ronald M. George  
Chief Justice of California and  
Chairperson of the Judicial Council

February 28, 2005 (Continued)

DIVISION ONE (Continued)

B175161      Los Angeles County, D.C.S.      (Not for Publication)  
v.  
Michael V.

The orders of May 11, 2004, and May 18, 2004, are affirmed.

Mallano, J.

We concur:    Spencer, P.J.  
                 Vogel (Miriam A.), J.

B176689      Los Angeles County, D.C.S.      (Not for Publication)  
v.  
Shannon D.

The orders of July 16, 2004, are affirmed.

Mallano, Acting P.J.

I concur:        Suzukawa, J. (Assigned)  
I concur in the judgment only: Vogel (Miriam A.), J.

B174220      People                                      (Not for Publication)  
v.  
Lucas A. Mariscal

The judgment is affirmed.

Spencer, P.J.

We concur:    Mallano, J.  
                 Suzukawa, J. (Assigned)

## February 28, 2005 (Continued)

## DIVISION ONE (Continued)

B174527 People (Not for Publication)  
v.  
Ricky D. Bell

The judgment is modified to delete the 10-year consecutive term enhancement imposed pursuant to Penal Code section 186.22, subdivision (b)(1)(C), and to provide a 15-year minimum parole eligibility date pursuant to subdivision (b)(5) of that section. As so modified, the judgment is affirmed. The clerk of the trial court is directed to prepare a modified abstract of judgment and to forward a copy to the Department of Corrections.

Spencer, P.J.

I concur: Suzukawa, J. (Assigned)  
I concur in the judgment only: Vogel (Miriam A.), J.

B175663      Los Angeles County, D.C.S.      (Not for Publication)  
v.  
Alfred A. et al.

The orders of March 18, 2004, and May 26, 2004, are reversed.

Mallano, J.

We concur: Spencer, P.J.  
Suzukawa, J. (Assigned)

B174651 People (Not for Publication)  
v.  
Garcia

The judgment is affirmed.

Suzukawa, J. (Assigned)

We concur:   Mallano, Acting P.J.  
                      Vogel (Miriam A.), J.

February 28, 2005 (Continued)

## DIVISION ONE (Continued)

B172810      Garite      (Not for Publication)  
v.  
Gold Coast Broadcasting et al.

The order is affirmed.

Spencer, P.J.

I concur: Mallano, J.  
I dissent: Vogel (Miriam A.), J. (Opinion)

B174471      Santini      (Not for Publication)  
v.  
American Media, Inc. et al.

The order is affirmed.

Spencer, P.J.

We concur: Mallano, J.  
Suzukawa, J. (Assigned)

### DIVISION THREE

B168586      People      (Certified for Partial Publication)  
v.  
Avitia

The judgment is reversed as to count 1, grossly negligent discharge of a firearm, and affirmed on count 2, possession of an assault weapon. The matter is remanded for further proceedings consistent with this opinion.

Aldrich, J.

We concur: Klein, P.J.  
Croskey, J.

### DIVISION THREE (Continued)

B172320 People (Not for Publication)  
v.  
Avila

the clerk of the superior court is ordered to correct the trial court's minute order of December 12, 2003, to reflect that Avila's motion pursuant to People v. Superior Court (Romero), supra, 13 Cal.4th 497, was denied. The judgment is modified to impose a \$50 state penalty assessment (1464) and a \$35 county penalty assessment (Gov. Code, 76000). The clerk of the superior court is ordered to forward a corrected abstract of judgment to the Department of Corrections. In all other respects, the judgment is affirmed.

Aldrich, J.

We concur: Klein, P.J.  
Kitching, J.

B170727 People (Not for Publication)  
v.  
Ferrill

The judgment is affirmed.

Aldrich, J.

We concur: Klein, P.J.  
Kitching, J.

B171665      Patel      (Not for Publication)  
v.  
L.A. County Superior Court, et al.

The judgment is affirmed. Costs on appeal are awarded to defendants the Los Angeles County Superior Court and Judge Lillian Stevens.

Kitching, J.

We concur: Klein, P.J.  
Croskey, J.

DIVISION THREE (Continued)

B177992      Woolls      (Certified for Publication)

v.  
Superior Court, Los Angeles County  
(Turner, et al., r.p.i.)

The order to show cause is discharged. Let a peremptory writ of mandate issue, directing respondent superior court to vacate its order entered on August 9, 2004, and to enter a new order granting Woolls's petition to vacate the arbitrator's award. Woolls is awarded his costs in this proceeding. (Cal. Rules of Court, 56 (l).)

Klein, P.J.

We concur:    Kitching, J.  
                  Aldrich, J.

B174399      Equimax Mortgage & Loan, Inc.    (Not for Publication)

v.  
Lavian

The judgment is affirmed. Costs on appeal are awarded to Equimax Mortgage & Loan, Inc.

Kitching, J.

We concur:    Klein, P.J.  
                  Croskey, J.

B171861      People      (Not for Publication)

v.  
Cardan

The judgment is affirmed.

Kitching, J.

We concur:    Klein, P.J.  
                  Croskey, J.

DIVISION THREE (Continued)

B170865      Randall, as Executrix, etc. (Not for Publication)  
                 v.  
                 Perkins

The petition for writ of mandate is granted in part and denied in part. The trial court is directed to vacate its August 15, 2003 order and to render a new statement of decision and order, consistent with the principles set forth herein. No costs are awarded.

Klein, P.J.

We concur:    Kitching, J.  
                 Aldrich, J.

DIVISION FOUR

B173629      People                              (Not for Publication)  
                 v.  
                 Reyes

The judgment is affirmed.

Curry, J.

We concur:    Epstein, P.J.  
                 Hastings, J.

B169499      People                              (Not for Publication)  
                 v.  
                 McAllister

The judgment is affirmed.

Epstein, P.J.

We concur:    Hastings, J.  
                 Curry, J.

February 28, 2005 (Continued)

DIVISION FOUR (Continued)

B165376      Mars  
                 v.  
                 County of Los Angeles et al.

Filed order vacating submission order of January 15, 2005. Supplemental letter briefs requested. Matter to be resubmitted upon filing of appellants' reply letter brief.

DIVISION FIVE

2-28-05

**125890-05**

The **HONORABLE SANDY R KRIEGLER**, Judge of the Superior Court of California, County of Los Angeles, is hereby assigned to assist the Court of Appeal, Second Appellate District, **Division Five**, as a justice thereof, on the following dates:

**March 1, 2005 to April 4, 2005**

and until completion and disposition of all causes and matters submitted pursuant to this assignment including, if necessary by reason of a vacancy or disqualification of a Court of Appeal justice, all petitions for rehearing arising out of such causes and matters.

This assignment does not extend to any matter in which the panel would be composed of two justices pro tempore.

Dated: February 17, 2005

Ronald M. George  
Chief Justice of California and  
Chairperson of the Judicial Council



February 28, 2005 (Continued)

DIVISION FIVE (Continued)

Court convened at 9:00 a.m.

Present: Turner, P.J., Armstrong, J., Mosk, J. and J. Belcher, Deputy Clerk.

Each of the following:

B175937 Peo v. Valentino

B174715 Peo v. Martin P.

B174573 Leon v. Budget Rent-A-Car

Argument waived, cause submitted.

B170465 Jayendra Shah

B172745 v.

Department of Health Services

Merits:

Argued by Frank A. Weiser for appellant and by John Tavetian, deputy attorney general, and by Eric R. Cioffi, deputy city attorney for respondents. Cause submitted.

B174378 People

v.

Christopher Fawcett

Merits:

Argued by Carol S. Boyk for appellant and by Jonathan J. Kline, deputy attorney general, for respondent. Cause submitted.

B175801 Stanley Heller

v.

Circle K Stores, Inc.

Merits:

Argued by Steven B. Katz for appellant and by Mitch Kalcheim for respondent. Cause submitted.

DIVISION FIVE (Continued)

B171659     Gregg Stott  
                 v.  
                 Joanne Bruckel

Merits:  
Argued by Brett S. Markson for appellants and by Michael S. Overing for respondent. Cause submitted.

B173168     Jarrow Formulas, Inc.  
                 v.  
                 Sandra Hogan La Marche et al.

Merits:  
Argued by Frank E. Meredeth, Jr. for appellant and by Edith R. Mattai for respondents. Cause submitted.

B172567     Fred Adelman et al.  
                 v.  
                 Robinson, Diamant & Wolkowitz et al.

Merits:  
Argued by Andrew Chang for appellants and by Danny T. Morin for respondents. Cause submitted.

B173281     Marc Angelucci  
                 v.  
                 Century Supper Club

Merits:  
Argued by Joseph Collier for appellants and by Steven L. Martin for respondent. Cause submitted.

Court recessed at 11:05 a.m.

February 28, 2005 (Continued)

DIVISION FIVE (Continued)

Court reconvened at 11:10 a.m.

Present: Turner, P.J., Armstrong, J., Mosk, J. and J. Belcher, Deputy Clerk.

B171722     Unity Pictures Corporation  
                 v.  
                 Universal City Studios, Inc.

Merits:

Argued by Michael R. Blaha for appellant and by Gail Migdal Title for respondent. Cause submitted.

Each of the following:

B177032 Peo v. Lopez  
B175282 Peo v. Cicek  
B176749 Peo v. Williams  
B178087 DCFS v. Valentine J.

Argument waived, cause submitted.

Court recessed.

Court reconvened at 1:00 p.m.

Present: Turner, P.J., Mosk, J., Kriegler, J. (Assigned) and J. Belcher, Deputy Clerk.

B175187     Quest v. Pina

Argument waived, cause submitted.

B175823     Zilei Zhong et al.  
                 v.  
                 Allstate Insurance Company

Appearances:

Zilei Zhong in propria persona and by Dean H. McVay for respondents.  
Both parties waived argument. Cause submitted.

February 28, 2005 (Continued)

DIVISION FIVE (Continued)

B174885      Thomas Childress  
v.  
California Department of Motor Vehicles

Merits:

Argued by Michael G. Witmer, deputy attorney general, for appellant. No appearance for respondent. Cause submitted.

Court adjourned at 1:15 p.m.

B167295      Essex Insurance Co.  
v.  
Five Star Dye House Inc.

Filed order denying petition for rehearing. Justice Armstrong would grant petition for rehearing.

DIVISION SIX

B179051      George P.      (Certified for Publication)  
v.  
San Luis Obispo Superior Court  
(San Luis Obispo Co. Dept. of Social Services, r.p.i.)

The writ is denied.

Perren, J.

We concur:   Gilbert, P.J.  
                      Coffee, J.

B176919      Child Protective Services  
v.  
Steven S.  
In re Tyler S., Minor.

Filed order denying petition for rehearing.

February 28, 2005 (Continued)

## DIVISION SIX (Continued)

B174491 People (Not for Publication)  
v.  
Jones

The judgment is affirmed.

Yegan, J.

I concur: Gilbert, P.J.  
I dissent: Perren, J. (opinion)

## DIVISION SEVEN

B172624      Zepeda et al.      (Not for Publication)  
v.  
Farmers Home Mutual Insurance Company

The judgment is affirmed. Respondent(s) to recover costs.

Zelon, J.

We concur: Perluss, P.J.  
Woods, J.

## DIVISION EIGHT

B159223	City of Santa Monica v. Stewart, et al.
B160037	Amy v. City of Pasadena, et al.
B162530	
B164794	

Filed order modifying opinion. Petition for rehearing is denied. (No change in the judgment)

DIVISION EIGHT (Continued)

B175733      Los Angeles County, D.C.S.      (Not for Publication)

v.

Karen M.,

In re Destiny M., a Person Coming Under the Juvenile Court Law.

The order denying Karen's section 388 petition is affirmed. The order terminating Karen's parental rights is reversed. The matter is remanded to the juvenile court with directions to order the Department to provide the pertinent tribe with proper notice under the ICWA of the pending proceedings, and to file proof of receipt of such notice by such tribe, along with a copy of the notice. If, after notice is properly given, the tribe does not respond indicating that Destiny is an Indian child within the meaning of the ICWA, the juvenile court shall then reinstate its prior orders. If the tribe determines that Destiny is an Indian child, the juvenile court shall conduct proceedings in accordance with the ICWA and rule 1439 of the California Rules of Court. In all other respects, the orders of the juvenile court are affirmed.

Flier, J.

We concur: Rubin, Acting P.J.  
Boland, J.

B170209      People      (Not for Publication)

v.

Danny C.

Probation condition No. 15 is modified to read as follows: "Do not associate with anyone known to you to be disapproved of by your parents or Probation condition No. 21 is modified, in pertinent part, to read as follows: "[S]tay away from places where you know users of narcotics, controlled substances, poisons, or related paraphernalia congregate." The matter is remanded to the juvenile court for determination of the maximum commitment time and predisposition credits. In all other respects, the order is affirmed.

Rubin, Acting P.J.

We concur: Boland, J.  
Flier, J.

February 28, 2005 (Continued)

DIVISION EIGHT (Continued)

2-28-05

125980-05

The **HONORABLE EARL JOHNSON, JR.**, Associate Justice of the Court of Appeal, Second Appellate District, **Division Seven**, is hereby assigned to assist the Court of Appeal, Second Appellate District, **Division EIGHT**, as a justice thereof, on the following dates:

**February 24, 2005**

and until completion and disposition of all causes and matters submitted pursuant to this assignment including, if necessary by reason of a vacancy or disqualification of a Court of Appeal justice, all petitions for rehearing arising out of such causes and matters.

This assignment does not extend to any matter in which the panel would be composed of two justices pro tempore.

Dated: 2-23-05

Ronald M. George  
Chief Justice of California and  
Chairperson of the Judicial Council